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ABSTRACT

This circular details the methods for investigating whether a work is under copyright protection, and, if so, the facts of the copyright. Both in-person searches at the Copyright Office and searches by the Copyright Office staff for a $10.00 per hour fee are detailed. The circular also explains the effect of the Copyright Act of 1976, which completely revised federal copyright law. A copyright search request form to be used when requesting a search by the Copyright Office is included. (EW)

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ED293545

Circular

R22

How to Investigate the Copyright Status of a Work

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
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How to Investigate the Copyright Status of a Work

IN GENERAL

Methods of Approaching a Copyright Investigation

There are several ways to investigate whether a work is under copyright protection and, if so, the facts of the copyright. These are the main ones:

1. Examine a copy of the work (or, if the work is a sound recording, examine the disk, tape cartridge, or cassette in which the recorded sound is fixed, or the album cover, sleeve, or container in which the recording is sold) for such elements as a copyright notice, place and date of publication, author and publisher (for additional information, see p. 6, "Copyright Notice");

2. Make a search of the Copyright Office catalogs and other records; or

3. Have the Copyright Office make a search for you.

A Few Words of Caution About Copyright Investigations

Copyright investigations often involve more than one of these methods. Even if you follow all three approaches, the results may not be completely conclusive. Moreover, as explained in this circular, the changes brought about under the Copyright Act of 1976 must be considered when investigating the copyright status of a work.

This circular offers some practical guidance on what to look for if you are making a copyright investigation. It is important to realize, however, that this circular contains only general information, and that there are a number of exceptions to the principles outlined here. In many cases it is important to consult a copyright attorney before reaching any conclusions regarding the copyright status of a work.

HOW TO GO ABOUT SEARCHING COPYRIGHT OFFICE CATALOGS AND RECORDS

Catalog of Copyright Entries

The Copyright Office publishes the *Catalog of Copyright Entries (CCE),* which is divided into parts according to the classes of works registered. The present categories include: "Nondramatic Literary Works," "Performing Arts," "Motion Pictures and Filmstrips," "Sound Recordings," "Serials and Periodicals," "Visual Arts," "Maps," and "Renewals." Effective with the Fourth Series, Volume 2, 1979 Catalogs, the CCE has been issued in microfiche form **only;** previously, each part of the *Catalog* was issued at regular intervals in book form. Each CCE segment covers all registrations made during a particular period of time. Renewals made for any class during a particular period can be found in Part 8, "Renewals."

Before 1978, the catalog parts reflected the classes that existed at that time. Renewals for a particular class are found in the back section of the catalog for the class of work renewed (for example, renewal registrations for music made in 1976 appear in the last section of the music catalog for 1976).

A number of libraries throughout the United States maintain copies of the *Catalog,* and this may provide a good starting point if you wish to make a search yourself. There are some cases, however, in which a search of the *Catalog* alone will not be sufficient to provide the needed information. For example:

- Since the *Catalog* does not include entries for assignments or other recorded documents, it cannot be used for searches involving the ownership of rights.
- There is usually a time lag of a year or more before the part of the *Catalog* covering a particular registration is published.
- The *Catalog* entry contains the essential facts concerning a registration, but it is not a verbatim transcript of the registration record.

Individual Searches of Copyright Records

The Copyright Office is located in the Library of Congress James Madison Memorial Building, 101 Independence Ave., S.E., Washington, D.C.

Most records of the Copyright Office are open to public inspection and searching from 8:30 a.m. to 5 p.m. Monday through Friday (except legal holidays). The various records freely available to the public include an extensive card catalog, an automated catalog containing records from 1978 forward, record books, and microfilm records of assignments and related documents. Other records, including correspondence files and deposit copies, are not open to the public for searching. However, they may be inspected upon request and payment of a $10-per hour search fee.

If you wish to do your own searching in the Copyright Office files open to the public, you will be given assistance in locating the records you need and in learning searching procedures. If the Copyright Office staff actually makes the search for you, a search fee must be charged.

SEARCHING BY THE COPYRIGHT OFFICE

In General

Upon request, the Copyright Office staff will search its records at the statutory rate of $10 for each hour or fraction of an hour consumed. Based on the information you furnish, we will provide an estimate of the total search fee. If you decide to have the Office staff conduct the search, you should send the estimated amount with your request. The Office will then proceed with the search and send you a typewritten report or, if you prefer, an oral report by telephone. If you request an oral report, please provide a telephone number where you can be reached during normal business hours (8:30-5:00).

Search reports can be certified on request, for an extra fee of $4. Certified searches are most frequently requested to meet the evidentiary requirements of litigation.

Your request, and any other correspondence, should be addressed to:

Reference and Bibliography Section, LM-451
Copyright Office
Library of Congress
Washington, D.C. 20559
(202) 287-6850

What the Fee Does Not Cover

Note that the search fee does *not* include the cost of additional certificates, photocopies of deposits, or copies of other office records. For information concerning these services, request Circular 6 from the Copyright Office.

Information Needed

The more detailed information you can furnish with your request, the less time-consuming and expensive the search will be. Please provide as much of the following information as possible:

- The title of the work, with any possible variants;
- The names of the authors, including possible pseudonyms;
- The name of the probable copyright owner, which may be the publisher or producer;
- The approximate year when the work was published or registered;
- The type of work involved (book, play, musical composition, sound recording, photograph, etc.);
- For a work originally published as a part of a periodical or collection, the title of that publication and any other information, such as the volume or issue number, to help identify it;
- Motion pictures are often based on other works such as books or serialized contributions to periodicals or other composite works. If you desire a search for an underlying work or for music from a motion picture, you must specifically request such a search. You must also identify the underlying works and music and furnish the specific titles, authors, and approximate dates of these works; and
- The registration number of any other copyright data.

Searches Involving Assignments and Other Documents Affecting Copyright Ownership

The Copyright Office staff will also, for the standard hourly search fee, search its indexes covering the records of assignments and other recorded documents concerning ownership of copyrights. The reports of searches in these cases will state the facts shown in the Office's indexes of the recorded documents, but will offer no interpretation of the content of the documents or their legal effect.

NOTE: Unless your request specifies otherwise, Copyright Office searches include records pertaining to registrations, renewals, assignments and other records of documents concerning copyright ownership. If you want the office to search any other special records such as notices of use, or if you want to exclude specific records from your search, please make this clear in your request.

LIMITATIONS ON SEARCHES

In determining whether or not to have a search made, you should keep the following points in mind:

No Special Lists

The Copyright Office does not maintain any listings of works by subject, or any lists of works that are in the public domain.

Contributions

Individual works, such as stories, poems, articles, or musical compositions that were published as contributions to a copyrighted periodical or collection, are usually not listed separately by title in our records.

No Comparisons

The Copyright Office does not search or compare copies of works to determine questions of possible infringement or to determine how much two or more versions of a work have in common.

Titles and Names Not Copyrightable

Copyright does not protect names and titles, and our records list many different works identified by the same or similar titles. Some brand names, trade names, slogans, and phrases may be entitled to protection under the general rules of law relating to unfair competition, or to registration under the provisions of the trademark laws. Questions about the trademark laws should be addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231. Possible protection of names and titles under common law principles of unfair competition is a question of state law.

No Legal Advice

The Copyright Office cannot express any opinion as to the legal significance or effect of the facts included in a search report.

SOME WORDS OF CAUTION

Searches Not Always Conclusive

Searches of the Copyright Office catalogs and records are useful in helping to determine the copyright status of a work, but they cannot be regarded as conclusive in all cases. The complete absence of any information about a work in the office records does not mean that the work is unprotected. The following are examples of cases in which information about a particular work may be incomplete or lacking entirely in the Copyright Office:

- Before 1978, unpublished works were entitled to protection at common law without the need of registration.
- Works published with notice prior to 1978 may be registered at **any** time within the first 28-year term; to obtain renewal protection, however, the claimant must register and renew such work by the end of the 28th year.
- For works that came under copyright protection after 1978, registration may be made at any time during the term of protection; it is not generally required as a condition of copyright protection (there are, however, certain definite advantages to registration; please call or write for Circular 1, "Copyright Basics").
- Since searches are ordinarily limited to registrations that have already been cataloged, a search report may not cover recent registrations for which catalog records are not yet available.
- The information in the search request may not have been complete or specific enough to identify the work.
- The work may have been registered under a different title or as part of a larger work.

Protection in Foreign Countries

Even if you conclude that a work is in the public domain in the United States, this does not necessarily mean that you are free to use it in other countries. Every nation has its own

laws governing the length and scope of copyright protection, and these are applicable to uses of the work within that nation's borders. Thus, the expiration or loss of copyright protection in the United States may still leave the work fully protected against unauthorized use in other countries.

OTHER CIRCULARS

For further information, request Circulars 15, "Renewal of Copyright," 15a, "Duration of Copyright," 15t, "Extension of Copyright Terms," and 6, "Obtaining Copies of Copyright Office Records and Deposits," from:

Publications Section, LM-455
Copyright Office
Library of Congress
Washington, D.C. 20559
OR

You may call 202-287-9100 at any time, day or night, to leave a request for forms or circulars as a recorded message on the Forms HOTLINE. Requests made on the HOTLINE number are filled and mailed promptly.

IMPACT OF COPYRIGHT ACT ON COPYRIGHT INVESTIGATIONS

On October 19, 1976, the President signed into law a complete revision of the copyright law of the United States (Title 17 of the United States Code). Most provisions of the new copyright statute came into force on **January 1, 1978,** superseding the previous copyright act of 1909, and made significant changes in the copyright law. If you need more information about the provisions of the 1976 Act, or if you want a copy of the revised statute, write or call the Copyright Office and request Circular 92.

For copyright investigations, the following are some of the main points to consider about the impact of the Copyright Act of 1976:

A Changed System of Copyright Formalities

Some of the most sweeping changes under the 1976 Act involve copyright formalities; that is, the procedural requirements for securing and maintaining full copyright protection. The old system of formalities involved copyright notice, deposit and registration, recordation of transfers and licenses of copyright ownership, and United States manufacture, among other things. In general, while retaining formalities the present law reduces the chances of mistakes, softens the consequences of errors and omissions, and allows for the correction of errors.

Automatic Copyright

Under the present copyright law, copyright exists in original works of authorship created and fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly, or indirectly with the aid of a machine or device. In other words, copyright is an incident of creative authorship not dependent on statutory formalities. Thus, registration with the Copyright Office generally is not required, but there are certain advantages that arise from a timely registration. For further information on the advantages of registration, write or call the Copyright Office and request Circular 1, "Copyright Basics."

Copyright Notice

Both the 1909 and 1976 copyright acts require a notice of copyright on published works. For most works, a copyright notice consists of the symbol ©, the word "Copyright," or the abbreviation "Copr.," together with the name of the owner of copyright and the year of first publication; for example: "© Marion Crane 1987" or "Copyright 1987 by Milton Arbogast." For sound recordings published on or after February 15, 1972, a copyright notice might read "℗ 1987 XYZ Records, Inc." (See page 8 for more about sound recordings.) The present law prescribes that all visually perceptible published copies of a work, or published phonorecords of a sound recording, shall bear a proper copyright notice. This requirement applies equally whether the work is published in the United States or elsewhere by authority of the copyright owner. Compliance with the statutory notice requirements is the responsibility of the copyright owner. Unauthorized publication without the copyright notice, or with a defective notice, does not affect the validity of the copyright in the work. Advance permission from, or registration with, the Copyright Office is not required before placing a copyright notice on copies of a work, or on phonorecords of a sound recording. Moreover, for works first published on or after January 1, 1978, omission of the required notice, or

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use of a defective notice, does not result in forfeiture or outright loss of copyright protection. Certain omissions of, or defects in the notice of copyright, however, may lead to loss of copyright protection if certain steps are not taken to correct or cure the omissions or defects. The Copyright Office has issued a final regulation (37 CFR 201.20) which suggests various acceptable positions for the notice of copyright. For further information, write to the Copyright Office and request Circular 3.

Works Already in the Public Domain

The 1976 Act does not restore protection to works that fell into the public domain before January 1, 1978. If copyright in a particular work has been lost, the work is permanently in the public domain in this country, and the 1976 Act will not revive protection. Under the copyright law in effect prior to January 1, 1978, copyright could be lost in several situations: the most common were publication without the required copyright notice, expiration of the first 28-year copyright term without renewal, or final expiration of the second copyright term.

Scope of Exclusive Rights Under Copyright

The present law has changed and enlarged in some cases, the scope of the copyright owner's rights as against users of a work. The new rights apply to all uses of a work subject to protection by copyright after January 1, 1978, regardless of when the work was created.

DURATION OF COPYRIGHT PROTECTION

Works Originally Copyrighted On or After January 1, 1978

A work that is created and fixed in tangible form for the first time on or after January 1, 1978, is automatically protected from the moment of its creation, and is ordinarily given a term enduring for the author's life, plus an additional 50 years after the author's death. In the case of "a joint work prepared by two or more authors who did not work for hire," the term lasts for 50 years after the last surviving author's death. For works made for hire, and for anonymous and pseudonymous works (unless the author's identity is revealed in Copyright Office records), the duration of copyright will be 75 years from publication or 100 years from creation, whichever is less.

Works created before the 1976 law came into effect, but neither published nor registered for copyright before January 1, 1978, have been automatically brought under the statute and are now given Federal copyright protection. The duration of copyright in these works will generally be computed in the same way as for new works: the life-plus-50 or 75/100-year terms will apply. However, all works in this category are guaranteed at least 25 years of statutory protection.

Works Copyrighted Before January 1, 1978

Under the law in effect before 1978, copyright was secured either on the date a work was published with notice of copyright, or on the date of registration if the work was registered in unpublished form. In either case, copyright endured for a first term of 28 years from the date on which it was secured. During the last (28th) year of the first term, the copyright was eligible for renewal. The new copyright law has extended the renewal term from 28 to 47 years for copyrights in existence on January 1, 1978. However, the copyright still must be renewed in the 28th calendar year to receive the 47-year period of added protection. For more detailed information on the copyright term, write or call the Copyright Office and request Circulars 15a and 15t.

WORKS FIRST PUBLISHED BEFORE 1978: THE COPYRIGHT NOTICE

General Information About the Copyright Notice

In investigating the copyright status of works first published before January 1, 1978, the most important thing to look for is the notice of copyright. As a general rule under the previous law, copyright protection was lost permanently if the notice was omitted from the first authorized published edition of a work, or if it appeared in the wrong form or position. The form and position of the copyright notice for various types of works were specified in the copyright statute. Some courts were liberal in overlooking relatively minor departures from the statutory requirements, but a basic failure to comply with the notice provisions forfeited copyright protection and put the work into the public domain in this country.

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Absence of Copyright Notice

For works first published before 1978, the complete absence of a copyright notice from a published copy generally indicates that the work is not protected by copyright. However, there are a number of exceptions and qualifications to this general rule. The following are some of them:

Unpublished Works. No notice of copyright was required on the copies of any unpublished work. The concept of "publication" is very technical, and it was possible for a number of copies lacking a copyright notice to be reproduced and distributed without affecting copyright protection.

Foreign Editions. Under certain circumstances, the law exempted copies of a copyrighted work from the notice requirements if they were first published outside the United States. Some copies of these foreign editions could find their way into the United States without impairing the copyright.

Accidental Omission. The 1909 statute preserved copyright protection if the notice was omitted by accident or mistake from a "particular copy or copies."

Unauthorized Publication. A valid copyright was not secured if someone deleted the notice and/or published the work without authorization from the copyright owner.

Sound Recordings. Reproductions of sound recordings usually contain two different types of creative works: the underlying musical, dramatic, or literary work that is being performed or read, and the fixation of the actual sounds embodying the performance or reading. For protection of the underlying musical or literary work embodied in a recording, it is not necessary that a copyright notice covering this material appear on the phonograph records or tapes in which the recording is reproduced. As noted above, a special notice is required for protection of the recording of a series of musical, spoken, or other sounds which were fixed on or after February 15, 1972. Sound recordings fixed before February 15, 1972, are not eligible for Federal copyright protection. Neither the Sound Recording Act of 1971 nor the present copyright law can be applied or be construed to provide any retroactive protection for sound recordings fixed before that date. Such works, however, may be protected by various state laws or doctrines of common law.

The Date in the Copyright Notice

If you find a copyright notice, the date it contains may be important in determining the copyright status of the work. In general, the notice on works published before 1978 must include the year in which copyright was secured by publication (or, if the work was first registered for copyright in unpublished form, the year in which registration was made). There are two main exceptions to this rule.

- For pictorial, graphic, or sculptural works (Classes F through K under the 1909 law) the law permitted omission of the year date in the notice.
- For "new versions" of previously published or copyrighted works, the notice was not usually required to include more than the year of first publication of the new version itself. This is explained further under "Derivative Works" below.

The year in the notice usually (though not always) indicated when the copyright began. It is therefore significant in determining whether a copyright is still in effect; or, if the copyright has not yet run its course, the year date will help in deciding when the copyright is scheduled to expire. For further information about the duration of copyright, request Circular 15a.

In evaluating the meaning of the date in a notice, you should keep the following points in mind:

WORKS PUBLISHED AND COPYRIGHTED BEFORE JANUARY 1, 1978: A work published before January 1, 1978, and copyrighted within the past 75 years may still be protected by copyright in the United States if a valid renewal registration was made during the 28th year of the first term of the copyright. If renewed, and if still valid under the other provisions of the law, the copyright will expire 75 years from the end of the year in which it was first secured.

Therefore, with one exception, the United States copyright in any work published or copyrighted more than 75 years ago (75 years from January 1st in the present year) has expired by operation of law, and the work has permanently fallen into the public domain in the United States. For example, on January 1, 1986, copyright in works first published or copyrighted before January 1, 1911, will have expired; on January 1, 1987, copyright in works first published or copyrighted before January 1, 1912, will have expired.

WORKS FIRST PUBLISHED OR COPYRIGHTED BETWEEN JANUARY 1, 1910, AND DECEMBER 31, 1949,

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BUT NOT RENEWED: If a work was first published or copyrighted between January 1, 1910, and December 31, 1949, it is important to determine whether the copyright was renewed during the last (28th) year of the first term of the copyright. This can be done by searching the Copyright Office records or catalogs, as explained above. If no renewal registration was made, copyright protection expired permanently on the 28th anniversary of the date it was first secured.

WORKS FIRST PUBLISHED OR COPYRIGHTED BETWEEN JANUARY 1, 1910 AND DECEMBER 31, 1949, AND REGISTERED FOR RENEWAL: When a valid renewal registration was made and copyright in the work was in its second term on December 31, 1977, the renewal copyright term was extended under the present act to 47 years. In these cases, copyright will last for a total of 75 years from the end of the year in which copyright was originally secured. Example: Copyright in a work first published in 1917, and renewed in 1945, will expire on December 31, 1992.

WORKS FIRST PUBLISHED OR COPYRIGHTED BETWEEN JANUARY 1, 1950, AND DECEMBER 31, 1977: If a work was in its first 28-year term of copyright protection on January 1, 1978; it must be renewed in a timely fashion to secure the maximum term of copyright protection provided by the present copyright law. If renewal registration is made during the 28th calendar year of its first term, copyright will endure for 75 years from the end of the year copyright was originally secured. If not renewed, the copyright expires at the end of its 28th calendar year.

UNPUBLISHED, UNREGISTERED WORKS: Before 1978, if a work had neither been "published" in the legal sense nor registered in the Copyright Office, it was subject to perpetual protection under the common law. On January 1, 1978, all works of this kind, subject to protection by copyright, were automatically brought under the new Federal copyright statute. The duration of these new Federal copyrights will vary, but none of them will expire before December 31, 2002.

Derivative Works

In examining a copy (or a record or tape) for copyright information, it is important to determine whether that particular version of the work is an original edition of the work or a "new version." New versions include musical arrangements, adaptations, revised or newly edited editions, translations, dramatizations, abridgments, compilations, and works republished with new matter added. The law provides that derivative works are independently copyrightable and that the copyright in such a work does not affect or extend the protection, if any, in the underlying work. Under the 1909 law, courts have also held that the notice of copyright on a derivative work ordinarily need not include the dates or other information pertaining to the earlier works incorporated in it. This principle is specifically preserved in the present copyright law.

Thus, if the copy (or the record or tape) constitutes a derivative version of the work, these points should be kept in mind:

- The date in the copyright notice is not necessarily an indication of when copyright in all of the material in the work will expire. Some of the material may already be in the public domain, and some parts of the work may expire sooner than others.
- Even if some of the material in the derivative work is in the public domain and free for use, this does not mean that the "new" material added to it can be used without permission from the owner of copyright in the derivative work. It may be necessary to compare editions to determine what is free to use and what is not.
- Ownership of rights in the material included in a derivative work and in the preexisting work upon which it may be based may differ, and permission obtained from the owners of certain parts of the work may not authorize the use of other parts.

The Name in the Copyright Notice

Under the copyright statute in effect before 1978, the notice was required to include "the name of the copyright proprietor." The present act requires that the notice include "the name of the owner of copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner." The name in the notice (sometimes in combination with other statements on the copy, record, tape, container, or label) often gives persons wishing to use the work the information needed to identify the owner from whom licenses or permission can be sought. In other cases, the name provides a starting point for a search in the Copyright Office records or catalogs, as explained at the beginning in this circular.

In the case of works published before 1978, copyright registration is made in the name of the individual person or the entity identified as the copyright owner in the notice. For works published after 1978, registration is made in the name of the person or entity owning all the rights on the date the registration is made. This may or may not be the name appearing in the notice. In addition to its records of copyright registration, the Copyright Office maintains extensive records of assignments, exclusive licenses, and other documents dealing with copyright ownership.

Ad Interim

Ad interim copyright was a special short-term copyright that applied to certain books and periodicals in the English language, first manufactured and published outside the United States. It was a partial exception to the manufacturing requirements of the previous United States copyright law. Its purpose was to secure temporary United States protection for a work, pending the manufacture of an edition in the United States. The ad interim requirements changed several times over the years, and were subject to a number of exceptions and qualifications.

The manufacturing provisions of the copyright act expired on July 1, 1986, and are no longer a part of the copyright law. The transitional and supplementary provisions of the act provide that for any work in which ad interim copyright was subsisting or capable of being secured on December 31, 1977, copyright protection would be extended for a term compatible with other works in which copyright was subsisting on the effective date of the new act. Consequently, if the work was first published on or after July 1, 1977, and was eligible for ad interim copyright protection, the provisions of the present copyright act will be applicable to the protection of these works. Anyone investigating the copyright status of an English-language book or periodical first published outside the United States before July 1, 1977, should check carefully to determine:

- Whether the manufacturing requirements were applicable to the work; and
- If so, whether the ad interim requirements were met.

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search request form

Copyright Office
Library of Congress
Washington, D.C. 20559

Reference & Bibliography
Section
(202) 287-6850
8:30-5:00 Monday-Friday

Type of work:

☐ Book ☐ Music ☐ Motion Picture ☐ Drama ☐ Sound Recording
☐ Photograph/Artwork ☐ Map ☐ Periodical ☐ Contribution

Search information you require:

☐ Registration ☐ Renewal ☐ Assignment ☐ Address

Specifics of work to be searched:

TITLE: _____

AUTHOR: _____

COPYRIGHT CLAIMANT (if known): _____
(name in © notice)

APPROXIMATE YEAR DATE OF PUBLICATION/CREATION: _____

REGISTRATION NUMBER (if known): _____

OTHER IDENTIFYING INFORMATION: _____

If you need more space please attach additional pages.

Estimates are based on the Copyright Office fee of $10.00 an hour or fraction of an hour consumed. The more information you furnish as a basis for the search the better service we can provide.

Names, titles, and short phrases are not copyrightable.

Please read Circular 22 for more information on copyright searches.

YOUR NAME: _____

ADDRESS: _____

DAYTIME TELEPHONE NO. (_____) _____

Convey results of estimate/search by telephone
☐ yes ☐ no

C-768

Copyright Office • Library of Congress • Washington, D.C. 20559

February 1987—30,000

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